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ON BIN LONG & ORS

v.

ROMELI DOLLAH

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COURT OF APPEAL, PUTRAJAYA

ZAHARAH IBRAHIM JCA

ANANTHAM KASINATHER JCA

LIM YEE LAN JCA

[CIVIL APPEAL NO: C-02(NCVC)(W)-1411-06-2013]

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7 APRIL 2014

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JURISDICTION: Courts - Original jurisdiction - High Court - Defamation suit - Co-operative society - Resolutions contained defamatory allegations against respondent - Suit filed in High Court - Whether court has original jurisdiction to entertain dispute - Whether dispute involved matters which fell under s. 82(1) Co-operative Societies Act 1993 - Exclusive jurisdiction - Whether lay with Co-operative Commission - Whether defamation suit a nullity

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TORT: Defamation - Proceedings - Jurisdiction - Co-operative commission - Whether clothed with jurisdiction to deal with claim for defamation - Whether dispute involved matters which fell under s. 82(1) Co-operative Societies Act 1993 - Private law remedy - Whether jurisdiction lay with High Court

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UNINCORPORATED ASSOCIATIONS: Societies - Co-operative society - Defamation suit - Jurisdiction - High Court - Resolutions contained defamatory allegations - Whether Co-operative Commission clothed with jurisdiction to deal with claim for defamation - Whether dispute involved matters which fell under s. 82(1) Co-operative Societies Act 1993 - Whether jurisdiction lay with High Court

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The respondent was a member and the chairperson of the sixth appellant ('the co-operative'). Thereafter, the third appellant replaced the respondent as the chairperson. During the annual general meeting of the co-operative, resolutions were passed to remove the respondent as a member. The respondent, however, successfully challenged the validity of these resolutions pursuant to a case filed by him with the Co-operative Commission and he was consequently reinstated as a member of the co-operative. In the High Court, the respondent succeeded in his claim for defamation against the appellants as it was alleged that the resolutions contained unsubstantiated and defamatory allegations against the

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respondent. The appellants then commenced an action against the respondent and sought a declaration that the defamation suit was a nullity by challenging the jurisdiction of the High Court in entertaining the dispute between the parties. It was submitted, *inter alia*, that (i) the dispute was one that involved matters which fell within the ambit of s. 82(1) of the Co-operative Societies Act 1993 ('the Act') and the exclusive original jurisdiction to determine such dispute lay with the Co-operative Commission; and (ii) the High Court did not have original jurisdiction to entertain the dispute. Hence, it was argued that all orders obtained in the defamation suit were null and void and of no effect. The respondent, on the other hand, contended that a claim based on the tort of defamation did not fall within the ambit of s. 82(1) of the Act since the law of defamation was a private law remedy which was available to individuals to protect their reputation against defamatory statements and was not within the province of the Co-operative Commission. The High Court rejected the prayers sought by the appellants and hence this appeal.

Held (dismissing appeal with costs)

Per Anantham Kasinather JCA delivering the judgment of the court:

- (1) The Co-operative Commissioner was not clothed with any jurisdiction to deal with the tortious claim for defamation. The respondent was correct when he filed his claim for reinstatement as a member with the Co-operative Commission and thereafter, filed his claim for defamation with the ordinary court of law by way of the civil suit. Further, the defamatory material contained in the various resolutions moved by the appellants and subsequently incorporated in the reports of the co-operative society could not relate to a transaction in which the member must be interested as a member (*Co-operative Central Bank Ltd v. Sri Devi Lekshmy Amma*; foll) (*Deccan Merchants Co-operative Bank Ltd v. M/s Dalichand Jugray Jain & Ors*; refd). (para 14)

Bahasa Malaysia Translation Of Headnotes

Responden merupakan ahli dan pengerusi perayu keenam ('koperasi'). Perayu ketiga kemudiannya telah menggantikan responden sebagai pengerusi. Semasa mesyuarat agung tahunan koperasi, beberapa resolusi telah diluluskan untuk menyingkirkan responden sebagai ahli. Responden, walau bagaimanapun, berjaya

- A mencabar kesahihan resolusi-resolusi tersebut melalui kes yang difailkan olehnya dengan Suruhanjaya Koperasi dan telah dilantik semula sebagai ahli koperasi. Di Mahkamah Tinggi, responden berjaya dalam tuntutanannya bagi fitnah terhadap perayu-perayu atas alasan bahawa resolusi-resolusi tersebut mengandungi tuduhan
- B fitnah yang tidak berasas terhadap responden. Perayu-perayu kemudian memulakan tindakan terhadap responden dan menuntut deklarasi bahawa guaman fitnah tersebut adalah tidak sah dengan mencabar bidang kuasa Mahkamah Tinggi dalam memutuskan pertikaian antara pihak-pihak. Adalah dihujahkan, antara lain,
- C bahawa (i) pertikaian melibatkan perkara-perkara yang terangkum di bawah s. 82(1) Akta Koperasi 1993 ('Akta') dan bidang kuasa eksklusif untuk memutuskan pertikaian sebegitu terletak dengan Suruhanjaya Koperasi; dan (ii) Mahkamah Tinggi tidak mempunyai bidang kuasa asal untuk menentukan pertikaian tersebut. Oleh itu,
- D adalah dihujahkan bahawa kesemua perintah yang diperolehi melalui guaman fitnah tersebut adalah tidak sah dan terbatal. Responden, sebaliknya, menghujahkan bahawa suatu tuntutan berdasarkan tort fitnah tidak terangkum di bawah s. 82(1) Akta memandangkan undang-undang fitnah adalah remedi undang-undang persendirian
- E yang boleh diperolehi oleh individu-individu untuk melindungi reputasi mereka terhadap kenyataan-kenyataan fitnah dan tidak termasuk dalam bidang kuasa suruhanjaya koperasi. Mahkamah Tinggi menolak tuntutan perayu-perayu dan oleh itu rayuan ini.
- F **Diputuskan (menolak rayuan dengan kos)**
Oleh Anantham Kasinather HMR menyampaikan penghakiman mahkamah:
- (1) Pesuruhjaya Koperasi tidak mempunyai sebarang bidang kuasa untuk menangani tuntutan bersifat tort bagi fitnah. Responden
- G adalah betul dalam memfailkan tindakannya untuk pelantikan semula sebagai ahli dengan Suruhanjaya Koperasi dan selepas itu, memfailkan tindakan beliau untuk fitnah dengan mahkamah undang-undang melalui guaman sivil. Selanjutnya, bahan-bahan fitnah yang terkandung di dalam beberapa resolusi yang
- H diluluskan oleh perayu-perayu dan kemudiannya termaktub dalam laporan-laporan koperasi tidak boleh dikaitkan dengan transaksi di mana ahlinya adalah seorang ahli yang mempunyai kepentingan (*Co-operative Central Bank Ltd v. Sri Devi Lekshmy Amma*; diikuti) (*Deccan Merchants Co-operative Bank Ltd v. M/s Dalichand Jugray Jain & Ors*; dirujuk).
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Case(s) referred to:

Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC (**refd**)

Bujang Mohidin Jol & Ors v. Koperasi Koperkasa Bhd [2005] 1 LNS 372 HC (**refd**)

Co-operative Central Bank Ltd v. Sri Devi Lekshmy Amma [1990] 1 CLJ 714; [1990] 1 CLJ (Rep) 72 SC (**fol**)

Deccan Merchants Co-operative Bank Ltd v. M/s Dalichand Jugaray Jain & Ors AIR [1969] SC 1320 (**refd**)

EU Finance Berhad v. Lim Yoke Foo [1982] 1 LNS 21 FC (**refd**)

Legislation referred to:

Co-operative Societies Act 1993, ss. 49, 82(1)

Bombay Co-operative Societies Act 1925 [Ind], s. 54

For the appellant - Bastian Vendargon (Gere Arand with him); M/s Bastian Vendargon

For the respondent - Hon Kai Ping; M/s HY Lee & Hee

[Appeal from High Court, Kuantan; Civil Suit No: 22NCVC-124-5-2012]

Reported by Kumitha Abd Majid

JUDGMENT**Anantham Kasinather JCA:****Background Facts**

[1] The respondent was a pioneer member of the sixth appellant co-operative ('the said co-operative'). The respondent had been the said co-operative's chairperson until the year 2005/2006. The third appellant replaced the respondent as the chairperson of the said co-operative thereafter. During the term of the third appellant as chairperson, the respondent had filed a complaint with the regulatory body overseeing the operations of the said co-operative namely the Co-operative Commission alleging abuse of authority on the part of the third appellant.

[2] It is the case of the respondent that the third appellant did not take kindly to this complaint and consequently resolved to remove the respondent as a member of the said co-operative. The third appellant together with the remaining appellants successfully caused resolutions to be passed at the annual general meeting of the said co-operative on 30 July 2006 to have the respondent removed as a member. The validity of these resolutions were

A successfully challenged by the respondent pursuant to a case filed by him with the Co-operative Commission. The respondent was consequently reinstated as a member of the said co-operative.

B [3] According to the respondent, the resolutions contained unsubstantiated and defamatory allegations against the respondent. The contents of these defamatory resolutions were incorporated in the Mesyuarat Agung Kawasan and the Mesyuarat Agung Perwakilan Annual Report of the said co-operative. As these reports were circulated to members of the said co-operative residing throughout the state of Pahang, the respondent C successfully pursued defamation proceedings against the appellants in Kuantan High Court Civil Suit Bearing Number 22-98-2007 ('the said suit').

D [4] The appellants demonstrated their unhappiness with the decisions of the Co-operative Commission and the High Court by repeating the defamatory allegations in yet another annual general meeting of the sixth appellant held in the year 2010. The removal of the respondent at this annual general meeting was again E successfully challenged by the respondent. The proceedings in the Co-operative Commission arising from the second removal of the respondent were compromised by way of a consent order dated 17 October 2011. By this order, the appellants agreed not to repeat the defamatory allegations.

F [5] The appellants commenced this action in the Kuantan High Court on 18 June 2012 against the respondent seeking a declaration that the said suit which resulted in the appellants being ordered to pay the respondent the sum of RM200,000 by way of damages for defaming the respondent was a nullity.

G **Appellants' Case**

H [6] Learned counsel for the appellant challenged the jurisdiction of the High Court of Kuantan to entertain the dispute between the parties in the said suit. The thrust of the submission of learned counsel was that:

- I (a) the dispute between the parties in the said suit is one that involved matters falling within the ambit of s. 82(1) of the Co-operative Societies Act 1993;
- (b) pursuant to s. 82(1) of the Co-operative Societies Act 1993, the exclusive original jurisdiction to determine such disputes lay with the Co-operative Commission in accordance with the Act;

(c) the High Court is not to exercise original jurisdiction as to any claim or issue in respect or upon which jurisdiction is conferred by the Co-operative Societies Act 1993 upon the Co-operative Commission; and A

(d) since the High Court had no original jurisdiction to entertain the dispute in the said suit, the said suit and all orders and the judgment obtained in the said suit (including the execution proceedings and orders obtained pursuant thereto) are null and void and of no effect. B

[7] Learned counsel for the appellant submitted that s. 82 of the Co-operative Society Act 1993 has widened the scope of disputes that are to be referred to the Co-operative Commission for settlement in comparison with the equivalent s. 49 in the preceding legislation. The pronouncements of David Wong Dak Wah JC (as His Lordship then was) in the case of *Bujang Mohidin Jol & Ors v. Koperasi Koperkasa Bhd* [2005] 1 LNS 372; [2005] MLJU 545 were cited to us as authority for this proposition. This pronouncements being: C

... reading the aforesaid sections, one can easily conclude that the purport and intent of Parliament is to restrict the role of the Courts in matters concerning the business of co-operative societies. The pivotal person in the whole scheme of the thing is the Registrar General of the Co-operative Societies. Once there is a dispute, reference must be made to him for his decision. The Registrar General can settle the dispute himself or refer it to an arbitrator or require the parties to refer to the Courts as provided for in section 82(3) of the Act or pursuant to section 83(1) of the Act recommend to the Minister to establish a Tribunal to settle the dispute. D

[8] Learned counsel contended that if the High Court had no original jurisdiction to entertain the dispute between the parties, then, it must follow based on the Federal Court authority of *EU Finance Berhad v. Lim Yoke Foo* [1982] 1 LNS 21; [1982] 2 MLJ 37 that this court must set aside the order of the High Court in the said suit since the original order is a nullity. The more recent case of *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75 was also cited to us as another authority which reinforced the earlier pronouncements of the Federal Court in *EU Finance Berhad v. Lim Yoke Foo (supra)*. E

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A Respondent's Case

[9] The fairly short submission of the learned counsel for the respondent was that a claim based on the tort of defamation did not fall within the ambit of s. 82(1) of the Co-operative Societies Act 1993 in that:

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- (a) the law of defamation is a private law remedy available to individuals to protect their reputation against defamatory statements. The courts have always maintained jurisdiction over defamatory actions to facilitate the granting of reliefs and remedies such as declarations, injunctions and damage, which
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- were not within the province of the Co-operative Commission;
- (b) an action for defamation of an individual is personal to the victim such that even a bankrupt can sue for defamation without sanction of the official assignee; and
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- (c) the appellants having actively participated in the said civil suit are estopped in law from challenging the jurisdiction of the High Court in the said suit at this late stage.

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Judgment Of The Court

[10] In our judgment, the answer to this appeal is provided in the decision of the Supreme Court in the case of *Co-operative Central Bank Ltd v. Sri Devi Lekshmy Amma* [1990] 1 CLJ 714; [1990] 1 CLJ (Rep) 72. The facts of this case are that a co-operative society granted a loan to a member of the society. The loan was secured by way of a charge created in favour of the lender by the wife of the member. Following default on the part of the member in the repayment of the loan, the co-operative society sought to foreclose the charged property. The non-member wife challenged the right of the co-operative society to foreclose by contending that:

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She was not liable until the breach by the member of the co-operative society had been determined and that until the breach had been established, any action against the respondent was premature.

[11] According to the borrower husband, his liability to the co-operative society for the outstanding loan could only be determined by the Co-operative Commission pursuant to s. 49 of the Co-operative Societies Act 1948. The contention that the foreclosure claim was premature was therefore premised on the husband member's liability not having been determined by the

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Co-operative Commission. Incidentally s. 49 is the precursor to s. 82 of the 1993 Act, the provision which is relevant in this appeal. Counsel for the co-operative society urged the Supreme Court in this case to follow the interpretation adopted by the Indian Court in the case of *Deccan Merchants Co-operative Bank Ltd v. M/s Dalichand Jugray Jain & Ors* AIR [1969] SC 1320 when considering the equivalent section in the Indian legislation. The rationale for this submission being that, the origin for the provision in both jurisdictions had as its source the English Friendly Society Act 1922.

[12] The Supreme Court of India in the case of *Deccan Merchants Co-operative Bank Ltd v. M/s Dalichand Jugray Jain & Ors* (*supra*) in construing the word 'dispute' under s. 54 of the Bombay Co-operative Societies Act 1925 the equivalent of our s. 49 stated:

- (a) One other limitation on the word 'dispute' may also be placed and that is that the word 'dispute' covers only those dispute which are capable of being resolved by the Registrar or his nominee. It seems to us very doubtful that the word 'dispute' would include a dispute between a landlord society and a tenant when the landlord society has not been set up for the purpose of construction or buying and letting out houses ...
- (b) This was the line of reasoning adopted by the House of Lords in *EC Mulkern v. James Lord* [1989] 4 AC 182 in holding that 'proceedings in respect of accounts under a mortgage and sale of the property, which might include title to redemption or a judgment of foreclosure, were not such dispute between the society and a member, as the statutes (Friendly Societies Act (10 Geo. 4, s. 56) read with s. 4 of 6 and 7 Will, 4, c.32) had contemplated.

Now before a case can fall under s. 54 (of the Bombay Co-operative Societies Act VII of 1925), it is not sufficient that there should be a dispute touching the business of the society. What is further required is that the dispute must be between the society and its member, and proper emphasis has got to be laid upon the expression 'member' used in this section. The dispute must be between the society and the member as a member or qua a member. It must be a dispute in which the member must be interested as a member. It must relate to a transaction in which the member must be interested as a member.

(see page 75 of the reported judgment of *Cooperative Central Bank Ltd. v. Sri Devi Lekshmy Amma* (*supra*)).

- A [13] Based on the pronouncements of the Supreme Court of India on the construction to be placed on the word ‘dispute’ in the equivalent provision in the Indian Legislation, Lee Hun Hoe CJ (Borneo) (as His Lordship then was) opined that the foreclosure of the charge by the co-operative society without awaiting the disposal of the co-operative societies’ claim against the husband member was not premature since the charge created an independent obligation. The significance of the pronouncements of Lee Hun Hoe CJ to this appeal is His Lordship’s pronouncement that another ground why the word “dispute” did not include foreclosure proceedings was:
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‘fourthly, only the Courts have the powers to make the order for sale’.

- D [14] Applying the principle of law enunciated by the Supreme Court in Co-Operative Central Bank to the facts of our case, in our judgment, the learned trial judge was right in rejecting the prayers sought by the appellant in Civil Suit No. 22NCVC-124-5-2012 because it is trite that the Co-operative Commissioner is not clothed with any jurisdiction to deal with the tortious claim for defamation that the respondent successfully pursued in the said suit. Accordingly, in our judgment, the respondent was right in filing his claim for reinstatement as a member with the Co-operative Commission but filing his claim for defamation with the ordinary court of law by way of the said civil suit. Secondly,
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- “relate to a transaction in which the member must be interested as a member”.

- [15] Accordingly, we dismiss the appeal with costs. We order the appellants to pay the costs of RM5,000 to the respondent. The deposit is to be paid to the respondent towards account of such costs.
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